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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

ENRIQUE BRISENO,

Defendant and Appellant.

G052210

(Super. Ct. No. 14WF3607)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Nancy E. Zeltzer, Judge. Affirmed.

Kendall Dawson Wasley, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, Scott C. Taylor and Charles C. Ragland, Deputy Attorneys General, for Plaintiff and Respondent.

Enrique Briseno appeals from a judgment after a jury convicted him of unlawfully taking a vehicle and possessing a burglary tool. Briseno contends the evidence was insufficient to support his convictions. We disagree and affirm the judgment.

### FACTS

In 2014, Jesus Castro's locked Toyota Camry was stolen from his house in Santa Ana. Two weeks later, a Garden Grove police officer saw Briseno driving Castro's car. The police officer checked the car's license plate number and discovered it was flagged as stolen or lost. The officer attempted to pull over Briseno. Briseno continued to drive the car, even after the officer activated his patrol car's lights. When Briseno did not immediately pull over, the officer sounded an air horn. Briseno slowed and moved to the right lane, but continued driving past another street. The officer testified he became concerned Briseno might attempt to flee. Briseno pulled over on the next street, approximately 200 yards from where the officer initiated the stop.

The police officer determined from the car's vehicle identification number the car was stolen from Santa Ana and the license plate did not match the vehicle. The holes on the top of the license plate used to screw in the plate were not complete, and electrical tape was used to secure it in place. A key was in the ignition, but the officer had to use a lot of force to pull the key out. The key was very worn down and lacked the typical "teeth" of a normal key.

The officer testified, based on his training and experience investigating over 100 vehicle thefts, the worn down condition of the key could allow it to start various types of vehicles. Indeed, the officer tried the key to his own patrol car on Castro's vehicle and was able to start it. This signaled the ignition had been tampered with.

Castro testified he did not know Briseno and Briseno did not have permission to drive his car. The only people with permission to drive the car were Castro and his children, all of whom were inside the house on the day the car was stolen.

When Castro regained possession of the car, it ran properly. However, his license plate and frame were missing, it had dark spray paint on the outside and windows, and the front of the car's radio and the backseat were destroyed. The ignition worked, but the key had to be played with for it to be fully inserted. The driver's side door lock was difficult to use, and Castro testified at times he had to use the passenger side door to enter the car. None of these problems were present before the car was stolen. Castro also noticed his personal belongings were missing from the car and other items that did not belong to him were inside the car's interior and trunk.

An information charged Briseno with felony vehicle theft or driving with a prior offense (Pen. Code,<sup>1</sup> § 666.5, subd. (a), Veh. Code, § 10851, subd. (a); count 1), receiving stolen property with a prior offense (§§ 666.5, (subd. (a), 496d, subd. (a); count 2), possession of a controlled substance (Health & Saf. Code, § 11377, subd. (a); count 3), possession of narcotics paraphernalia (Health & Saf. Code, § 11364.1, subd. (a); count 4), and possession of burglary tools (§ 466; count 5).<sup>2</sup> The information also alleged three prior strike convictions (§§ 667, subds. (d), (e)(2)(A), 1170.12, subds. (b), (c)(2)(A)), and six prior prison terms (§ 667.5, subd. (a)).

Briseno pled guilty to counts 3 and 4. The jury found Briseno guilty of counts 1 and 5. The court dismissed count 2.<sup>3</sup> In a bifurcated proceeding, the court found true Briseno's three prior strike convictions and his prior prison terms. The court

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<sup>1</sup> All further statutory references are to the Penal Code, unless otherwise indicated.

<sup>2</sup> Because this appeal concerns only counts 1 and 5, facts pertinent only to the other charges are not summarized here.

<sup>3</sup> The trial court instructed the jury that if it found Briseno guilty of taking the vehicle in count 1, it could not also convict him of receiving the vehicle as stolen property in count 2. After finding Briseno guilty on count 1, the jury left the verdict form for count 2 unsigned, and the trial court dismissed the count.

sentenced Briseno to a total of eight years in prison, six years for count 1 and one year each for two prison prior convictions. The court struck the remaining prison prior convictions and imposed concurrent terms on the remaining counts.

## DISCUSSION

Our standard of review on a challenge to the sufficiency of the evidence to support a conviction is whether “on the entire record, a rational trier of fact could find the defendant guilty beyond a reasonable doubt.” (*People v. Ochoa* (1993) 6 Cal.4th 1199, 1206.) A reviewing court may not reverse a conviction based upon insufficient evidence unless it is clear “that upon no hypothesis whatever is there sufficient substantial evidence to support it.” (*People v. Redmond* (1969) 71 Cal.2d 745, 755.) In order to affirm a conviction, we must find substantial evidence supports each element of the offense. (*People v. Magallanes* (2009) 173 Cal.App.4th 529, 533.)

### *Count 1*

Briseno argues no rational trier of fact could have determined he knew the car was stolen or he possessed the required intent to deprive Castro of possession. Vehicle Code section 10851, subdivision (a), states: “Any person who drives or takes a vehicle not his or her own, without the consent of the owner thereof, and with intent either to permanently or temporarily deprive the owner thereof of his or her title to or possession of the vehicle, whether with or without intent to steal the vehicle . . . is guilty of a public offense . . . .” Intent to unlawfully deprive an owner of possession of his or her vehicle may be established from circumstantial evidence, and is a question for the trier of fact. (*People v. O’Dell* (2007) 153 Cal.App.4th 1569, 1577; see *People v. Perez* (1962) 203 Cal.App.2d 397, 400.)

Substantial evidence supports the jury’s determination that (1) Briseno unlawfully took the vehicle and (2) Briseno took the vehicle with the intent to deprive Castro of possession or ownership of the car for any period of time. (*People v. Windham* (1987) 194 Cal.App.3d 1580, 1590.) As to the first element, Castro testified he did not

know Briseno or give him permission to drive the car. The evidence established an officer caught Briseno driving the vehicle and when the officer tried to perform a traffic stop, Briseno initially tried to flee. While Briseno contends he did not attempt to evade police, on the evidence presented at trial the jury could reasonably conclude Briseno initially fled from police, indicating a consciousness of guilt. The trial court instructed the jury on flight. Testimony also showed Briseno was alone in the car and was driving the car with a worn key. The officer testified he knew from his experience investigating vehicle thefts the worn key was a burglary tool used to drive multiple vehicles. The jury could properly conclude this circumstantial evidence, along with Briseno's actual possession of the stolen car, demonstrated Briseno unlawfully took the car.

The jury also properly determined the second element was met. The intent element of Vehicle Code section 10851, subdivision (a), can be "inferred from all the facts and circumstances of the particular case. Once the unlawful taking of the vehicle has been established, possession of the recently taken vehicle by the defendant with slight corroboration through statements or conduct tending to show guilt is sufficient to sustain a conviction of Vehicle Code section 10851. [Citations.]" (*People v. Green* (1995) 34 Cal.App.4th 165, 181.) Briseno was caught driving Castro's stolen car two weeks after it was taken. The car's license plates were replaced, there were significant modifications to the interior and exterior of the car, and Castro's belongings were removed from the car and replaced by another person's items. Briseno was also found driving the vehicle with a worn key and did not immediately stop when police attempted to pull him over. Notwithstanding this evidence, Briseno claims the prosecution presented no evidence as to his intent, including his knowledge of the car being stolen or his participation in the car's modifications. Briseno's claim falls short. Based upon all of the facts and circumstances presented at trial, we find the jury properly inferred Briseno had the requisite intent under Vehicle Code section 10851, subdivision (a).

### *Count 5*

Briseno claims there was insufficient evidence to convict him for count 5, possession of burglary tools, because he lacked the required intent to use the tool (a worn key) for the felonious purpose of breaking and entering. We disagree. “[I]n order to sustain a conviction for possession of burglary tools in violation of section 466, the prosecution must establish three elements: (1) possession by the defendant; (2) of tools within the purview of the statute; (3) with the intent to use the tools for the felonious purposes of breaking or entering. [Citation.]” (*People v. Southard* (2007) 152 Cal.App.4th 1079, 1084-1085.)

Here, Briseno was found in possession of the worn, or master, key within the purview of section 466. As previously discussed, Briseno did not have consent to drive the car, initially may have attempted to flee, and was caught driving the car with the worn key. The evidence showed Briseno not only intended to break into Castro’s car, but indeed accomplished that intent by stealing it. The jury could thus reasonably conclude, based upon the police officer’s testimony, Briseno’s intent to use burglary tools for the felonious purposes of breaking or entering.

Briseno’s contention there was no evidence he modified the worn key or knew it was a modified key is a non-starter. “There is no requirement that the defendant know that the screwdriver is a screwdriver, or the master key is a master key, or even that a particular tool is a slim jim. In other words, the possession of each of the items is lawful until it is intended to be used feloniously.” (*People v. Valenzuela* (2001) 92 Cal.App.4th 768, 777.) Based on the entire record, we find sufficient evidence supporting Briseno’s conviction of counts 1 and 5 under both the federal and state constitutional due process clauses. (*Jackson v. Virginia* (1979) 443 U.S. 307, 318-319; *People v. Johnson* (1980) 26 Cal.3d 557, 576-577.)

DISPOSITION

The judgment is affirmed.

O'LEARY, P. J.

WE CONCUR:

BEDSWORTH, J.

FYBEL, J.